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restrain a carrier from enforcing against the holder of a gratuitous pass an agreement by which the latter must bear the risks of transportation. *Quimby v. Boston, etc. R. R. Co.*, 150 Mass. 365.

Although this matter has been considered in not a few common law decisions, until recently it has seldom, if ever, come up in a court of admiralty with regard to carriers by sea. The judgments of a court of admiralty, though not professing to follow common law decisions, are often based on principles quite analogous to the common law rules. And obviously the above reasons of public policy in regard to this matter apply equally well to carriers by sea. It is gratifying to note, therefore, that the English admiralty court has lately decided the question in accord with what seems to be the sounder view. *The Stella*, *The Law Times*, April 14, 1900.

DUTY TO LOOK OUT FOR TRESPASSERS ON A RAILROAD TRACK. — The employees of a railroad company, while operating a train, are, in most jurisdictions, held to a duty of using reasonable care under the circumstances towards trespassers on the track, after they have been seen, but to no obligation to keep a lookout for them. *Chenery v. Fitchburg Ry. Co.*, 160 Mass. 211; *Scheffler v. Minneapolis & St. L. Ry. Co.*, 121 N. W. Rep. 711 (Minn.). A broader duty to use reasonable care to look for trespassers has, however, been recognized in a few courts. *Texas & P. Ry. Co. v. Watkins*, 29 S. W. Rep. 232 (Texas Sup. Ct.); *Pickett v. Wilmington & Weldon R. R. Co.*, 117 N. C. 616. In a recent case, where a trespasser was killed by a train, the court agreeing with the first and generally accepted view, held that the duty of using reasonable care only existed after the trespasser was seen. *Cleveland, C. C. & St. L. Ry. Co. v. Tartt*, 99 Fed. Rep. 369 (C. C. A., Seventh Cir.).

Recovery has been sometimes barred in such cases on the ground that contributory negligence is proven by the mere act of trespass. But by the better authority a trespass is only evidence, not conclusive proof of negligence. Therefore one who trespasses without thereby incurring such risk as to be called negligent, and who suffers an injury which might have been averted had the engineer been reasonably watchful, can be barred of an action only because the latter is not bound to keep a lookout. But if reasonable care is required towards such trespassers as are seen on the track, on the principle that acts causing probable damage to others are forbidden, why should no care be required towards such as are likely to be on the track, and to be injured unless warned? Certainly an engineer cannot assume that no one will commit the merely technical wrong of walking on or crossing the track when he knows that at a certain place such trespassing is frequent, or that some special circumstance, such as a fire close to the track in a city, makes it extremely probable. Accordingly a failure to look out for trespassers can be warranted only on the ground that the engineer's other duties of watching his machinery, and regulating his time and speed, involve such serious consequences to a large number of passengers, that he should not be turned from them by an additional duty towards persons voluntarily incurring a certain risk. But as the measure of care should be only that which circumstances make reasonable, no duty exists to keep a lookout when more important duties interfere.

Frequent accidents would be the inevitable result of running fast trains if no lookout whatsoever were kept. Apparently it is only the assump-

tion that the engineer is to some extent watchful, which prevents the more general passing of statutes requiring a constant lookout on the track ahead, and keeps the running of trains, without this precaution, from being, in truth, negligence *per se*. It would, therefore, seem no great hardship, in spite of the difficult question of fact which must consequently be sent to the jury, to require of engineers, as a legal duty, that reasonable care under the circumstances, which it is assumed they ordinarily use.

ADVERSE POSSESSION. — A recent Alabama case is of interest as illustrating the nature of adverse possession. The plaintiff's ancestor, in 1867, purchased land upon an execution sale, without obtaining a release of dower from the execution debtor's wife. The former owner, however, remained in possession until his death in 1870, and thereafter the widow and children occupied the land, the widow paying the taxes, until 1887, when the widow died. The plaintiff then sued the children in ejectment, and recovered judgment. The court held that the possession of the widow being under her statutory right of quarantine which allowed her to remain in possession until dower was assigned, was neither a continuation of her husband's possession, nor adverse to the plaintiff's legal title. *Robinson v. Allison*, 27 So. Rep. 461 (Ala.).

Undoubtedly the possession of the widow was not adverse to the plaintiff's claim, if it was in pursuance of her statutory right of quarantine. For in that case the fact that her possession was lawful barred the plaintiff's right to bring ejectment and prevented the running of the statute. The rule would serve to work a hardship upon the children in such a case, but that is a necessary consequence. The court went farther, however, and held that no assertion of ownership on the part of the widow could make her possession adverse, as she would nevertheless be secure in her right to possession until the dower was set out. Yet this does not seem to be sound. In this country a lessee may disaffirm orally and thereafter hold adversely to his landlord's title, and on principle there seems to be no good reason why a widow may not do the same as to her statutory right of quarantine. Obviously a claim of fee by the widow must be open, and notorious, and in a case like the one under discussion, it must be clearly proved. But if the fact were actually established, her adverse possession for the statutory period should allow her to transmit the fee to her heirs. A similar result might possibly be reached in another way. The fact that the widow and children continued in possession might be said to indicate that the children claimed their father's tortious fee by descent subject to the widow's right to dower in that tortious estate. Then the children should be protected after the running of the statutory period. They could even tack their adverse possession to that of their father if that were necessary. Yet to adopt this latter view would be to put a strained interpretation on the facts. On the ground, however, that the widow did actually claim a fee — and the report of the case indicates that there was evidence to that effect — the decision in the principal case would seem to be questionable. That the widow's possession might have been lawful, had she not claimed the fee, should not, it seems, utterly deprive her of all power of holding adversely.